

Traeger Machetanz, ABA #8411127
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: 206-757-8337
Fax: 206-757-7337
E-mail: traegermachetanz@dwt.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ORION MARINE CONTRACTORS, INC.,

Plaintiff,

v.

CITY OF SEWARD,

Defendant.

No.

COMPLAINT FOR BREACH OF
CONTRACT

Plaintiff Orion Marine Contractors, Inc. ("Orion Marine"), for its Complaint against the City of Seward ("Seward"), hereby alleges as follows:

I. PARTIES

1. Plaintiff Orion is a Delaware corporation with its principal place of business in Houston, Texas. Orion is in good standing, having obtained all licenses, paid all taxes and filed all reports which are a prerequisite to its right to bring this action.

2. Defendant City of Seward is a city in the State of Alaska.

II. JURISDICTION AND VENUE

3. The Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the matter is between citizens of different states.

4. Venue is proper in this judicial district because Orion conducts business in the district, Seward is a resident of the district, relevant events occurred in the district, and substantial relevant evidence and many relevant witnesses reside within the district.

III. FACTS

5. In response to an invitation to bid put out by Seward, Orion submitted a bid for the production of armor rock and core rock from the City of Seward Quarry ("Quarry") for use in constructing a new breakwater at the Seward Marine Industrial Center ("Project").

6. The Seward bid documents provided that Seward would award the Project in four separate phases: the first phase was required ("Base Bid") and three optional phases that Seward could award or not as the preceding phase was completed. Orion relied upon the bid documents in calculating its Project bid. As part of its Base Bid, Orion included the sum of \$873,000 for mobilization/demobilization.

7. Pursuant to the terms contained in the bid documents, Orion was required to utilize a new area of the Quarry and produce rock larger than historically produced from the Quarry, creating a significant amount of uncertainty about whether the new areas would produce usable rock in sufficient quantity.

8. To address the uncertainty about whether the yield would meet the contractor's estimate, the bid documents provided that Orion could request termination of the contract for convenience after the Base Bid was completed if, in Orion's opinion, the Quarry did not obtain the yield that was estimated.

9. Orion was the low project bidder, and on August 27, 2014, Orion entered into a contract with Seward for the Project.

10. Notwithstanding the terms of the Project bid documents, Seward awarded the work on August 27, 2014 for all four phases: the Base Bid and three optional phases. Orion had been the low bidder for the Base Bid as well as low bidder for each of the three optional phases.

11. During the course of performing the Base Bid, Orion realized that it could only complete the production of the Base Bid rock at a much higher cost than originally anticipated, i.e. the Quarry did not yield usable rock in sufficient quantity compared to the total rock that had to be blasted.

12. Pursuant to the terms of its contract with Seward, Orion sent Seward a request for termination for convenience on November 25, 2014, after it completed performance of the Base Bid.

13. Seward granted Orion's request for termination for convenience, effective November 25, 2014, and instructed Orion to demobilize from the Quarry. Seward also informed Orion that it would pay Orion only \$492,072.00 for all mobilization and demobilization.

14. Orion disputed the final payment amount on January 21, 2015, and submitted a claim under Article 15 for \$380,928, representing the unpaid balance due Orion for its Base Bid mobilization and demobilization from the Quarry.

15. Via letters dated March 2, 2015, and March 18, 2015, Seward rejected Orion's claim. In response, Orion appealed its claims on April 9, 2015, and April 17, 2015.

16. On May 1, 2015, Seward rejected Orion's appeal.

17. Orion has satisfied all contractual conditions precedent to filing this lawsuit and now timely brings this lawsuit.

IV. FIRST CAUSE OF ACTION-BREACH OF CONTRACT

18. Orion repeats and realleges paragraphs 1 through 17 above as though fully set forth in this claim.

19. Orion has performed all of its obligations under the contract.

20. Seward breached its contract with Orion by failing to pay Orion amounts due and owing Orion under the contract.

21. Orion has suffered damages as a direct and proximate result of Seward's breach of contract in the principal amount of \$380,928.

V. PRAYER FOR RELIEF

Wherefore, having fully alleged its claims herein, Orion respectfully prays for the following relief:

1. For judgment rendered against Seward and in favor of Orion;
2. For an award of damages on all causes of action in an amount to be finally determined at trial;
3. For actual reasonable attorneys' fees as allowed by the applicable statutes and civil rules;
4. For costs as allowed by the applicable statutes and civil rules; and
5. For all such other and further relief as the Court deems just and equitable.

DATED this 26th day of August, 2015.

Davis Wright Tremaine LLP
Attorneys for Orion Marine Contractors Inc.

By 
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